

Columbus, MS

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

VCNCL, LLC, d/b/a VINEYARD COURT  
NURSING AND REHABILITATION CENTER  
Employer

and

Case 15-RC-114384

RETAIL WHOLESALE AND DEPARTMENT  
STORE UNION  
Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered objections to an election held January 3, 2014, and the Regional Director's report recommending disposition of them. The tally of ballots shows 25 for and 18 against the Petitioner, with 4 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and brief, has adopted the Regional Director's findings and recommendations, and finds that a certification of representative should be issued.

We agree with the Regional Director's recommendation to overrule the Employer's objections without a hearing. A hearing should be held if the objecting party establishes that it could provide evidence that, if credited, would warrant setting aside the election. See, e.g., *Transcare New York, Inc.*, 355 NLRB 326 (2010). The Employer has not satisfied this standard regarding any of its objections.<sup>1</sup>

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<sup>1</sup> In Objections 3 and 4, the Employer contended that the Regional Director's December 24, 2013 Erratum, correcting her Decision and Direction of Election, materially changed the voting-

## CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Retail Wholesale and Department Store Union, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

Included: All full time and regular part-time service and maintenance employees, including the CNAs, Dietary Employees, Housekeeping employees, Laundry employees, Maintenance employees, Activity Employees, and Social Services Director; Excluded: All Registered Nurses, Licensed Practical Nurses, MDS Coordinator, Treatment Nurse, QAPI Coordinator, Medical Records Nurse, Professional employees, Office Clerical employees, Guards, and Supervisors as defined by the Act.

Dated, Washington, D.C., November 19, 2014.

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Mark Gaston Pearce,	Chairman
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Harry I. Johnson, III,	Member
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Nancy Schiffer,	Member
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(SEAL)

NATIONAL LABOR RELATIONS BOARD

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unit description and misled employees at the January 3, 2014 election. In fact, the Notices of Election posted for employees in advance of the election were posted with the proper unit description. Moreover, even if the Employer had introduced evidence tending to show that employees were both aware of and confused by the error in the Regional Director's decision, the error itself was unobjectionable. The decision incorrectly specified that four employees would vote under challenge, but this figure constituted less than 10% of the voting unit, an acceptable percentage of employees to vote under challenge under Board precedent. See, e.g., *Northwest Iowa Telephone Co.*, 341 NLRB 670, 670-671 (2004).

In Objection 5, the Employer argued that the Regional Director's issuance of a complaint on December 31, 2013, alleging the Employer's commission of an unfair labor practice, was the result of a conspiracy between the Petitioner and the Region and required setting aside the election. However, the Employer offered no evidence of such a conspiracy, and it did not explain how the investigation of the Petitioner's charge could have been conducted differently, how the investigation intimidated the Employer from discussing the charge during the critical period, or how the timing of the complaint's issuance was in any way objectionable.